

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-0253-T - ORDER NO. 2001-070

JANUARY 25, 2001

IN RE: Application of ABS Transportation, Inc.,)	
3620 Pelham Road, Suite 5-302, Greenville,)	ORDER GRANTING
SC 29615 for a Class E Certificate of Public)	CLASS E CERTIFICATE
Convenience and Necessity to Transport)	
Commodities.)	

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of ABS Transportation, Inc., 3620 Pelham Road, Suite 5-302, Greenville, SC 29615 (hereafter referred to as "ABS" or the "Applicant"). By its Application, ABS requests a Class E Certificate of Public Convenience and Necessity to transport household goods. Specifically, ABS seeks authority to transport household goods as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in Anderson, Greenville, and
Spartanburg Counties, South Carolina.

The Commission's Executive Director instructed ABS to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing provided details of the Application and of the requested authority and provided

information for public participation in the proceedings concerning the Application. A Petition to Intervene was filed by Lytle's Transfer & Storage, Inc. ("Lytle's").¹

A hearing on ABS's Application was held on November 30, 2000, at 2:30 P.M. in the hearing room at the offices of the Commission. The Honorable William T. Saunders, Chairman, presided at the hearing. ABS was represented by John J. Pringle, Jr., Esquire. Florence P. Belser, Deputy General Counsel, represented the Commission Staff.

Greg Rogers, President of ABS, testified on behalf of ABS. The Staff did not present any witnesses.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 1999) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

...

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

¹ By letter dated August 22, 2000, Lytle's notified the Commission of its desire to withdraw as an intervenor in this docket. By Order No. 2000-757, dated September 11, 2000, the Commission approved Lytle's request to withdraw its intervention.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 1999) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 1999) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulation; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 1999) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers.

Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 1999) defines "Common Carrier by Motor Vehicle" as "any person² which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 1999) as a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission."

9. 26 S.C. Code Regs 103-133 (Supp. 1999) is entitled "Proof Required to Justify Approving an Application" and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.³ If

² 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

³ By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by "small carrier" applicants in providing

the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.P.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 1999) is entitled "When Hearing May Be Held" and provides in relevant part that " [w]hen an application for a Certificate of

appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served.”

EVIDENCE OR RECORD

Mr. Rogers, President of ABS, testified in support of the application. Mr. Rogers stated that ABS currently provides passenger transportation services and that through his business endeavors he has identified a need for household goods moving services. Thus, the reason for the instant application.

Mr. Rogers stated that ABS currently employs eleven employees but that he will seek additional employees trained in moving household goods. ABS is currently seeking to purchase or lease box trucks to use in providing household goods moving services. ABS has obtained prices on vehicles from Ryder Trucks in Greenville. According to Mr. Rogers, ABS has sufficient financial resources to purchase or lease the trucks. ABS has approximately twenty thousand dollars in cash and has a sizeable accounts receivables account. The accounts receivables account is composed mainly of invoices to the Department of Social Services for which passenger transportation services were rendered. Further, Mr. Rogers indicated that ABS has a good relationship with financial institutions and that financing of vehicles would not pose a problem to ABS.

With regard to the need for moving services for which the applicant seeks authority, Mr. Rogers testified he is aware of the Department of Social Services requiring moving services and anticipates being able to fill that need. Mr. Rogers also provided

information from the United States Bureau of the Census and the South Carolina Appalachian Council of Governments concerning Anderson, Greenville, and Spartanburg Counties.⁴ This information revealed new business and employment opportunities in the months of January – June 2000, increased population in the year 2000 from the year 1995, and residential construction permits for January – September 2000. Mr. Rogers also stated that area of Anderson, Greenville, and Spartanburg Counties is in need of additional household goods moving services. As a basis for his opinion, Mr. Rogers cited his residency in the area and his business dealings in the area, including his insurance business and passenger transportation business.

While ABS does not yet have a safety rating, Mr. Rogers stated that he is familiar with the requirements and the need of obtaining a safety rating. Mr. Rogers testified that there are no outstanding judgments pending against ABS. Mr. Redden further stated that ABS is aware of the Commission regulations concerning insurance coverage and will obtain the requisite insurance coverage. Further, Mr. Rogers affirmed that ABS would operate in compliance with the statutes and regulations governing for-hire motor carrier services.

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, ABS Transportation, Inc., desires to provide moving services of household goods within and between points and places in Anderson,

⁴ The Commission took judicial notice of the information from the United States Bureau of the Census

Greenville, and Spartanburg Counties, South Carolina. This finding of fact is supported by the testimony of Mr. Rogers and the submission of the Application requesting a Class E Certificate of Public Convenience and Necessity.

2. The Applicant, ABS Transportation, Inc., is fit, willing, and able to provide and properly perform the services which it seeks to provide. This finding of fact is based upon the testimony of Mr. Rogers and the Application submitted requesting the authority. "Fitness" was demonstrated by Mr. Redden testifying (1) that the Applicant is aware of the requirement for a safety rating and will undergo the requisite safety inspection, (2) that there are no outstanding judgments pending against the Applicant, and (3) that the Applicant will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the application contains (1) a certification that the Applicant is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against the Applicant. "Able" was demonstrated by Mr. Redden testifying that the Applicant is making arrangements to secure equipment to provide the services. Specifically, Mr. Rogers stated that ABS is considering purchasing new or used equipment through Ryder Trucks in Greenville. Mr. Rogers also provided evidence establishing that ABS possesses the financial wherewithal necessary to obtain the equipment about which Mr. Rogers testified. Further, Mr. Rogers testified that the Applicant is aware of the Commission's insurance requirements and provided assurance that ABS would obtain the requisite insurance coverage. "Willingness" was demonstrated

by the filing of the Application and the testimony of Mr. Redden indicating the Applicant's desire to undertake this business venture.

3. The services proposed by ABS are required by the public convenience and necessity. This finding of fact is based upon the testimony of Mr. Rogers. As a resident and business owner in the Greenville area, Mr. Rogers opined that the economic conditions in Greenville and the surrounding area are strong. Further, Mr. Rogers stated that he is aware of the need for moving services through his insurance business and his passenger transportation business.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that the ABS has demonstrated through the Application and the testimony presented that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.1999).

2. The Commission concludes that ABS has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which the Applicant proposes to serve requires the services proposed by ABS.

3. Based on the conclusions above, that ABS has demonstrated that it meets the requirements of fit, willing, and able and that ABS has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted to ABS with the authority to provide for the movement of household goods within and between

points and places in Anderson, Greenville, and Spartanburg Counties, South Carolina. This grant of authority is contingent upon ABS complying with all Commission regulations, and this grant of authority is not effective until such time as ABS comes into compliance with the Commission regulations as outlined below.

IT IS THEREFORE ORDERED THAT:

1. The Applicant, ABS Transportation, Inc., should be granted a Class E Certificate of Public Convenience and Necessity authorizing ABS Transportation, Inc. to provide transportation services by motor vehicle as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in Anderson, Greenville, and
Spartanburg Counties, South Carolina.

2. ABS Transportation, Inc. shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to ABS Transportation, Inc. authorizing the motor carrier services granted herein.

4. Prior to compliance with the above referenced requirements and receipt of a Certificate, the motor carrier services authorized herein may not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)